

# **Planning Agreement**

**by and among**

**Orange County Transportation Authority, California Department of Transportation**

**California Department of Fish and Game, and**

**United States Fish and Wildlife Service**

**for the**

**Orange County Transportation Authority**

**Natural Community Conservation Plan (NCCP)/ Habitat Conservation Plan (HCP)**

**April 2009**

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**Orange County Transportation Authority Habitat Conservation Plan  
(HCP)/Natural Community Conservation Plan (NCCP)  
Planning Agreement**

This agreement regarding the planning and preparation of the Orange County Transportation Authority Natural Community Conservation Plan and Habitat Conservation Plan (Planning Agreement) is entered into as of the Effective Date by and among the Orange County Transportation Authority (OCTA), the California Department of Transportation (Caltrans), the California Department of Fish and Game (CDFG), and the United States Fish and Wildlife Service (USFWS). These entities are referred to collectively as “Parties” and each individually as a “Party.” CDFG and USFWS are referred to collectively as “Wildlife Agencies.”

## 1.0 Definitions

The following terms as used in this Planning Agreement will have the meanings set forth below.

- 1.1 “CEQA” means the California Environmental Quality Act, Public Resources Code, section 21000, *et seq.*
- 1.2 “CESA” means the California Endangered Species Act, California Fish and Game Code, section 2050 *et seq.*
- 1.3 “Covered Activities” means those certain activities that will be addressed in the NCCP/HCP and for which the OCTA and Caltrans may seek take authorizations pursuant to the California Fish and Game Code section 2835 and the Federal Endangered Species Act (“ESA”).
- 1.4 “Covered Species” means those species identified in the NCCP/HCP, both listed and non-listed, whose conservation and management are provided for in the NCCP/HCP, and which may be authorized for take under State and/or federal law once the NCCP/HCP is approved.
- 1.5 “Effective Date” means the date on which this Planning Agreement has been executed by the Parties.
- 1.6 “ESA” means the Federal Endangered Species Act, 16 United States Code section 1530, *et seq.*
- 1.7 “Habitat Conservation Plan” or “HCP” means a conservation plan prepared pursuant to section 10(a)(1)(B) of the ESA.

- 1.8 “Implementing Agreement” or “IA” means an agreement that defines the terms for implementing the NCCP/HCP.
- 1.9 “Listed Species” means those species designated as candidate, threatened or endangered pursuant to CESA and/or listed as threatened or endangered under the ESA.
- 1.10 “Natural Community Conservation Plan” or “NCCP” means a conservation plan created to meet the requirements of Fish and Game Code, section 2800, *et seq.*
- 1.11 “NCCP Act” means the Natural Community Conservation Planning Act, Fish and Game Code section 2800 *et seq.*
- 1.12 “NEPA” means the National Environmental Policy Act, 42 United States Code section 4321, *et seq.*
- 1.13 “Party” means an entity that is a signatory to this Planning Agreement. Such entities may be referred to individually as “Party” or collectively as “Parties.”
- 1.14 “Planning Area” means the geographic area proposed to be addressed in the NCCP/HCP as described in section 5.
- 1.15 “Renewed Measure M” means the Orange County Renewed Measure M Transportation Ordinance and Investment Plan.
- 1.16 “Section 7” means 16 United States Code section 1536.
- 1.17 “Section 10” means 16 United States Code section 1539.
- 1.18 “Steering Committee” means the committee established in accordance with section 7.4.1 of this Planning Agreement.

## 2.0 Background

### 2.1 Compliance with State and Federal Fish and Wildlife Protection Laws

The Planning Area contains valuable biological resources, including native species of fish and wildlife and their habitats. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA or the ESA. The Parties intend for the NCCP/HCP to meet the requirements of state and federal fish and wildlife protection laws that apply to Covered Activities and to provide a basis for state and federal authorizations for the take of Covered Species that may be caused by the Covered Activities.

Under state law, take of species listed pursuant to CESA may be authorized under Fish and Game Code section 2080.1 or section 2081, or section 2835 of the NCCP Act. The NCCP Act provides that after the approval of an NCCP, CDFG may permit the taking of any identified species, listed or non-listed, whose conservation and management is provided for in the NCCP. Take of listed species may also be authorized under CESA.

The Parties intend for the NCCP/HCP to be sufficient to support the issuance of take authorizations for Covered Activities under the NCCP Act and the ESA. The Parties acknowledge that the NCCP/HCP may be used to address other state and federal statutes.

The ESA provides that after the approval of an HCP, USFWS may permit the taking of fish and wildlife species covered in the HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of the ESA. Take authorization for federally listed species covered in the HCP are generally effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for any non-listed species covered in the HCP becomes effective if and when the species is listed pursuant to the ESA.

## 2.2 Purposes of this Agreement

The purposes of this Planning Agreement are to:

- Define the Parties' goals and commitments with regard to development of the OCTA NCCP/HCP;
- Define the initial geographic scope of the Planning Area;
- Identify a preliminary list of natural communities and species known or reasonably expected to be found in those communities that are intended to be the initial focus of the NCCP/HCP;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process for the inclusion of independent scientific input into the planning process;
- Ensure coordination among CDFG, USFWS, Caltrans, and OCTA;
- Establish a process to review interim projects within the Planning Area that will help achieve the preliminary conservation objectives and maintain viable conservation objectives and alternatives for the NCCP/HCP;
- Establish a process to ensure funding of the mitigation measures identified in the NCCP/HCP are consistent with Renewed Measure M; and
- Ensure public participation and outreach throughout the planning process.

### 2.3 Future ESA Section 7 Consultations

To the extent allowed under law, the Parties intend that the measures adopted to meet regulatory standards included in the NCCP/HCP, once approved by USFWS, will serve as the range of measures to be incorporated into biological opinions associated with future section 7 consultations between USFWS and a federal action agency regarding Covered Activities that may adversely affect listed Covered Species or that may result in the destruction or adverse modification of critical habitat.

### 2.4 Other Fish and Wildlife Protection Laws

Based on the NCCP/HCP, OCTA may seek approval or authorization under other state or federal fish and wildlife protection laws, including, but not necessarily limited to the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and various provisions of the Fish and Game Code. The Parties agree to collaborate to explore the feasibility of developing the NCCP/HCP to serve as the means by which Covered Activities may comply with these additional laws.

### 2.5 Concurrent Planning for Wetlands and Waters of the United States

Based on the NCCP/HCP, OCTA may seek future programmatic permits or other form of authorization under the Clean Water Act, section 1600 *et seq.* of the Fish and Game Code as necessary for Covered Activities. The Parties agree to work together to explore the feasibility of undertaking concurrent but separate planning regarding these permits. Such programmatic permits or other forms of authorization are not necessary, however, for approval of the NCCP/HCP or for issuance of take permits.

### 2.6 Assurances

#### 2.6.1 Regulatory Assurances Under the ESA

Upon approval of the HCP and issuance of an incidental take permit for Covered Activities, USFWS will provide assurances to OCTA that the USFWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for Covered Species, without the consent of OCTA, in accordance with 50 C.F.R. §§ 17.22(b)(5) and 17.32(b)(5).

#### 2.6.2 Regulatory Assurances Under the NCCP Act

If the OCTA NCCP/HCP meets the criteria for issuance of an NCCP permit under section 2835 of the Fish and Game Code, CDFG will approve the NCCP and provide assurances

consistent with its statutory authority upon issuance of the NCCP permit. Under section 2820(f) of the Fish and Game Code, CDFG may provide assurance for the Covered Activities commensurate with the level of long-term conservation and associated implementation measures provided in the NCCP. Assurances include that if unforeseen circumstances arise during implementation of the NCCP, CDFG will not require additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources without the consent of OCTA as long as the NCCP is being implemented consistent with the terms of the Implementation Agreement and associated take permit.

### 3.0 Planning Goals

The planning goals for the OCTA NCCP/HCP include the following:

- Provide for the conservation and management of Covered Species within the Planning Area;
- Preserve, restore and enhance aquatic, riparian and terrestrial natural communities and ecosystems that support Covered Species within the Planning Area;
- Provide a means to implement Covered Activities in a manner that complies with applicable state and federal fish and wildlife protection laws, including CESA and the ESA;
- Provide a basis for permits necessary to lawfully take Covered Species;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for Covered Activities within the Planning Area;
- Provide an accounting process that will document net environmental benefit from regional, programmatic mitigation in exchange for net benefit in the delivery of transportation improvements through streamlined and timely approvals and permitting;
- Provide a less costly, more efficient project review process that results in greater conservation values than project-by-project, species-by-species review; and
- Provide clear expectations and certain regulatory assurances regarding Covered Activities occurring within the Planning Area.

### 4.0 Planning Area and Plan Participants

#### 4.1 Geographic Scope

The Planning Area includes all of Orange County (Exhibit A). Regardless of the scope of the Planning Area, nothing in this Planning Agreement shall be construed to limit the consideration of adjacent areas outside of the County that are appropriate to take into account for preserve design purposes.



## 4.2 Local Agencies

The OCTA is the local sponsor of the NCCP/HCP. As part of this planning process, the OCTA has committed to undertake a collaborative, systematic approach to protecting the Planning Area's ecologically significant resources, including candidate, threatened and endangered species and their habitats, open space, and working landscapes, and to ensure that the Covered Activities comply with applicable federal and state laws.

## 4.3 California Department of Transportation

Caltrans is the owner and operator of the state highway system. It is the lead agency for construction and rehabilitation projects undertaken on the State highway system.

## 4.4 California Department of Fish and Game

CDFG is the agency of the State of California authorized to act as trustee for the state's wildlife. CDFG is authorized to approve NCCPs pursuant to the NCCP Act, administer and enforce CESA and other provisions of the Fish and Game Code, and enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCP Act.

## 4.5 United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce the ESA with respect to terrestrial wildlife, non-anadromous fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern. The NCCP Act and this Planning Agreement require coordination with USFWS with respect to the ESA.

## 5.0 Preliminary Conservation Objectives

The preliminary conservation objectives the Parties intend to achieve through the NCCP/HCP are to:

- Provide meaningful comprehensive environmental mitigation;
- Provide for habitat connectivity to ensure reserves maintain their biological functions and values;
- Provide for the protection of Covered Species and associated natural communities and ecosystems that occur within the Planning Area;
- Preserve the diversity of fish, wildlife, plant and natural communities in the Planning Area through the preservation and/or restoration of habitat;

- Avoid, minimize, and/or mitigate the take of Covered Species and their habitat; and
- Implement an adaptive management and monitoring program to respond to changing ecological conditions.

## 5.1 Conservation Elements

### 5.1.1 Ecosystems, Natural Communities, and Covered Species List

The NCCP/HCP will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning Area. In addition, the NCCP/HCP will establish species-specific minimization, mitigation, conservation and management measures where appropriate.

Natural communities that are likely to be addressed by the NCCP/HCP include, but are not limited to California Walnut Woodland, Canyon Live Oak Ravine Forest, Riversidian Alluvial Fan Scrub, Southern Coast Live Oak Riparian Forest, Southern Cottonwood Willow Riparian Forest, Southern Mixed Riparian Forest, Southern Willow Scrub, and Valley Needlegrass Grassland.

Species that are intended to be covered by the NCCP/HCP include, but are not limited to; Braunton's Milk Vetch, Coulter's Matilija Poppy, Intermediate Mariposa Lily, Many Stemmed Dudleya, Southern Tarplant, Southern Pacific Pond Turtle, San Diego Coast Horned Lizard, Orange Throated Whiptail Lizard, Red Diamond Rattlesnake, Coastal Cactus Wren, Coastal California Gnatcatcher, Coastal Rufous-Crowned Sparrow, Southwestern Willow Flycatcher, Least Bell's Vireo, Arroyo Chub, Santa Ana Sucker, Bobcat, Mountain Lion, Pallid Bat, Small-Footed Myotis Bat, Long-Eared Myotis Bat, and Yuma Myotis Bat (Exhibit B). Issuance of state and federal take authorizations for any particular Covered Species will require an individual determination by the applicable Wildlife Agency that the NCCP/HCP meets applicable state or federal permit issuance requirements.

### 5.1.2 Conservation Areas and Viable Habitat Linkages

The NCCP/HCP will protect, enhance, or restore habitat and provide or enhance habitat linkages throughout the Planning Area. The NCCP/HCP conservation strategy will address a range of environmental gradients and ecological functions, and will address appropriate principles of ecosystem management, ecosystem restoration, and population biology.

### 5.1.3 Project Design

Where applicable, the NCCP/HCP will ensure that each Covered Activity is appropriately designed to avoid and minimize impacts to Covered Species and their habitats.

## 6.0 Preparing the NCCP/HCP

The Parties intend that this Planning Agreement will establish a mutually agreeable process for preparing the NCCP/HCP that meets the procedural requirements of the NCCP Act and the ESA. The process used to develop the NCCP/HCP will incorporate independent scientific input and analysis and include public participation with ample opportunity for comment from the general public and from key groups of stakeholders.

### 6.1 Best Available Scientific Information

The NCCP/HCP will be based on the best available scientific information, including, but not limited to:

- Principles of conservation biology, community ecology, individual species ecology, and other appropriate scientific data and information;
- Thorough information about all natural communities and proposed Covered Species within the Planning Area; and
- Advice from well-qualified, independent scientists.

### 6.2 Data Collection

The Parties agree that information regarding species and the effect of Covered Activities is important for preparation of the NCCP/HCP. The Parties therefore agree that data collection for preparation of the NCCP/HCP should be prioritized to develop more complete information on these subjects. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species. The science advisory process and analysis of existing information may reveal data gaps currently not known that are necessary for the full and accurate development of the NCCP/HCP. Data needed for preparation of the NCCP/HCP may not be known at this time nor identified herein. Therefore, the Parties anticipate that data collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the NCCP/HCP will be made available to the Wildlife Agencies in hard and digital formats, as requested and available.

### 6.3 Independent Scientific Input

A group of independent scientists will be convened to provide input on:

- Species and natural communities covered by the NCCP/HCP

- Adequacy of existing data and methods for filling any data gaps
- Conservation guidelines and preserve design principles
- Conservation analytical methods
- Management and monitoring guidelines

## 6.4 Public Participation

The Parties will ensure an open and transparent process with an emphasis on obtaining input from a balanced variety of public and private interests. The planning process will utilize the Environmental Oversight Committee and the public outreach plan established under Renewed Measure M as well as publication of notices and draft documents to provide opportunities for thorough public participation.

### 6.4.1 Steering Committee

The Mitigation and Resource Protection Program Oversight Committee (Environment Oversight Committee) will serve as the Steering Committee for the NCCP/HCP.

### 6.4.2 Outreach

OCTA will establish a public outreach plan to ensure that information concerning the development of the NCCP/HCP reaches landowners, local governments, conservation organizations, community groups, and the general public.

### 6.4.3 Availability of Public Review Drafts

The Parties will designate and make available for public review online in a reasonable and timely manner “public review drafts” of pertinent planning documents.

### 6.4.4 Public Hearings

Public hearings regarding development of the NCCP/HCP will be planned and conducted in a manner that satisfies the requirements of CEQA, NEPA, and any other applicable state or federal laws.

### 6.4.5 Public Review and Comment Period Prior to Adoption

OCTA will make the draft NCCP/HCP available for public review and comment a minimum of 60 days before adoption. The draft NCCP/HCP and Implementing

Agreement will be distributed with the draft Environmental Impact Report (EIR) prepared for the NCCP pursuant to CEQA and the draft Environmental Impact Statement (EIS) prepared for the HCP pursuant to NEPA.

## 6.5 Covered Activities

The NCCP/HCP will identify the Covered Activities carried out by OCTA that may result in take of Covered Species within the Planning Area. Anticipated Covered Activities currently consist of thirteen freeway improvement projects as follows:

- 1) **Project A: I-5 Improvements between SR-55 and SR-57**  
Reduce freeway congestion through improvements at the SR-55/I-5 interchange area between the Fourth Street Newport Boulevard ramps on I-5, and between Fourth Street and Edinger Avenue on SR-55. Also, add capacity on I-5 between SR-55 and SR-57 to relieve congestion at the “Orange Crush.”
- 2) **Project B: I-5 Improvements from SR-55 to El Toro “Y”**  
Build new lanes and improve the interchanges in the area between SR-55 and the SR-133 (near the El Toro “Y”). The project will also make improvements at local interchanges, such as Jamboree Road.
- 3) **Project C: I-5 Improvements south of the El Toro “Y”**  
Add new lanes to I-5 from the vicinity of the El Toro Interchange in Lake Forest to the vicinity of SR-73 in Mission Viejo. Also add new lanes on I-5 between Coast Highway and Avenida Pico interchanges to reduce freeway congestion in San Clemente.
- 4) **Project D: I-5 Local Interchange Upgrades**  
Update and improve key I-5 interchanges such as Avenida Pico, Ortega Highway, Avery Parkway La Paz Road, El Toro Road, and others to relieve street congestion around older interchanges and on ramps.
- 5) **Project E: SR-22 Access Improvements**  
Construct interchange improvements at Euclid Street, Brookhurst Street and Harbor Boulevard to reduce freeway and local street congestion.
- 6) **Project F: SR-55 Improvements (between SR-22 and I-405)**  
Add new lanes to SR-55 between SR-22 and I-405, generally within existing right-of-way, including merging lanes between interchanges to smooth traffic flow. This project also provides for freeway operational improvements for the portion of SR-55 between SR-91 and SR-22.
- 7) **Project G: SR-57 Improvements**

Build a new northbound lane between Orangewood Avenue and Lambert Road. Other projects include improvements to the Lambert interchange and the addition of a northbound truck-climbing lane between Lambert and the county line.

8) **Project H: SR-91 Improvements from I-5 to SR-57**

Add capacity in the westbound direction and provide operational improvements at on and off ramps to the SR-91 between I-5 and SR-57.

9) **Project I: SR-91 Improvements from SR-57 to SR-55 Interchange Area**

Improve the SR-91/SR-55 to SR-91/SR-57 interchange complex, including nearby local interchanges such as Tustin Avenue and Lakeview, as well as adding freeway capacity between SR-55 and SR-57.

10) **Project J: SR-91 Improvements from SR-55 to Orange/Riverside County Line**

This project adds capacity on SR-91 beginning at SR-55 to the Orange/Riverside County Line. This will be done in coordination with the Riverside County Transportation Commission's (RCTC) plans to improve the SR-91 freeway into Riverside County. The first priority will be to improve the segment of SR-91 east of SR-241. The goal is to provide up to four new lanes of capacity between SR-241 and Riverside County Line by making best available use of freeway property, adding reversible lanes, building elevated sections and improving connections to SR-241. This project also includes improvements to the segment of SR-91 between SR-241 and SR-55. The concept is to generally add one new lane in each direction and improve the interchanges.

11) **Project K: I-405 Improvements between I-605 freeway in Los Alamitos area and SR-55**

Add new lanes to I-405 between I-605 and SR-55. The project will make best use of available freeway property, update interchanges and widen various local overcrossings according to city and regional plans. The improvements will be coordinated with other planned I-405 improvements in the I-405/SR-22/I-605 interchange area to the north and I-405/SR-73 improvements to the south.

12) **Project L: I-405 Improvements between SR-55 and I-5**

Add new lanes to the freeway from SR-55 to the I-5. The project will also improve chokepoints at interchanges and add merging lanes near on/off ramps such as Lake Forest Drive, Irvine Center Drive and SR-133 to improve the overall freeway operations in the I-405/I-5 El Toro "Y" area.

13) **Project M: I-605 Freeway Access Improvements**

Improve freeway access at I-605/Katella Avenue serving the communities of Los Alamitos and Cypress. The project will be coordinated with other planned improvements along SR-22 and I-405. Specific improvements will be subject to approved plans developed in cooperation with local jurisdictions and affected communities. This improvement will connect to interchange improvements at I-405 and SR-22 as well as new freeway lanes between I-405 and I-605.

## 6.6 Interim Project Processing

The Parties recognize that before the Wildlife Agencies approve the NCCP/HCP, certain projects and activities may be proposed within the Planning Area. The Parties agree to the following interim project process to: (1) ensure that development, construction, and other projects or activities approved or initiated in the Planning Area before completion of the NCCP/HCP are consistent with the preliminary conservation objectives and do not compromise successful completion and implementation of the NCCP/HCP; (2) facilitate ESA/CESA compliance for interim projects that require it; and (3) ensure that processing of interim projects is not unduly delayed during preparation of the NCCP/HCP.

The OCTA will notify the Wildlife Agencies about proposed projects or activities requiring discretionary approvals from the OCTA that have the potential to adversely impact proposed Covered Species and natural communities.

If the OCTA proposes to undertake or approve a project, it will notify the Wildlife Agencies of the project prior to the time the project application is deemed complete. The OCTA will notify the Wildlife Agencies of interim projects, and will provide (1) a depiction of the project location on a USGS 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a description of the project along with the land cover types present on the project site using the most current land cover data available; and (3) any other biological information available to the OCTA about the project area.

The Wildlife Agencies will use reasonable efforts to review interim projects in a timely manner. The Wildlife Agencies will recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. Any take of listed or candidate species arising out of a reportable interim project must be authorized pursuant to applicable State and federal law.

## 6.7 Protection of Habitat and other Resources During Planning Process

### 6.7.1 Conservation Actions

OCTA may elect to acquire and preserve, enhance, or restore habitat in the Planning Area that will support native species of fish, wildlife, or natural communities prior to approval of the NCCP/HCP. OCTA will confer with the Wildlife Agencies regarding potential resources to be protected. The Wildlife Agencies agree to credit such resources towards the habitat protection, enhancement and restoration requirements of the NCCP/HCP provided that these resources are appropriately conserved, restored, or enhanced and managed. Resources that will be credited to OCTA will be determined and agreed upon by the Parties prior to the acquisition of particular habitat parcels.

## 6.8 Implementing Agreement

An Implementing Agreement that includes specific provisions and procedures for the implementation, monitoring, and funding of the NCCP/HCP will be developed by the Parties. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the NCCP/HCP. The Implementing Agreement will contain provisions for:

- Conditions of species coverage;
- The long-term protection of habitat reserves;
- Implementation of conservation measures;
- Adequate funding to implement the NCCP/HCP;
- Terms for suspension or revocation of the permits;
- Procedures for amendment of the NCCP/HCP, Implementing Agreement, and take authorizations;
- Implementation of monitoring and adaptive management;
- Oversight of the NCCP/HCP's effectiveness;
- Reporting frequency and general content.

## 7.0 Commitment of Resources

### 7.1 Funding

Funding for the planning effort will be provided through Renewed Measure M revenues. OCTA, with the assistance of the Wildlife Agencies, will also seek grant support under the federal Endangered Species Act (e.g., Section 6 non-traditional planning grant) and State grants such as the NCCP Local Assistance Grants program. Additionally, to assist in prioritizing this NCCP/HCP, OCTA will provide CDFG with funding to support one staff position to assist with the planning effort.

## 8.0 Miscellaneous Provisions

### 8.1 Public Officials Not to Benefit



No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

## 8.2 Statutory Authority

The Planning Agreement is not intended, nor will it be construed, to modify any authority granted by statute, rule or regulation.

## 8.3 Multiple Originals

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed an official original copy.

## 8.4 Effective Date

The Effective Date of this Planning Agreement will be the date on which it is fully executed by the parties.

## 8.5 Duration

This Planning Agreement will be in effect until the NCCP/HCP is approved and permitted by the Wildlife Agencies, but shall not be in effect for more than 36 months following the Effective Date, unless extended by amendment. The Parties intend to initiate and complete the NCCP/HCP process as well as the necessary NEPA/CEQA environmental compliance document within a 24-month period from the Effective Date. This Planning Agreement may be terminated pursuant to Section 9.7 below.

## 8.6 Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

## 8.7 Termination and Withdrawal

This Planning Agreement can be terminated only by written agreement of all Parties. Any Party may withdraw from this Planning Agreement upon 30 day's written notice to the other Parties. Any mitigation credits acquired by OCTA prior to termination or withdrawal from this Planning Agreement would remain available to OCTA to offset the potential impacts of OCTA projects.

### 8.7.1 Funding

In the event that federal or State funds have been provided to assist with NCCP/HCP preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency unspent funds awarded to that Party prior to withdrawal. A withdrawing Party shall also provide the remaining Parties with a complete accounting of the use of any federal or State funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received funds shall return any unspent funds to the grantor prior to termination.

### 8.8 No Precedence

This Planning Agreement is not intended, and shall not be construed, to modify any existing or subsequently amended law, rule, regulation, or other legal authority, or requirements established thereunder.

The Parties' execution of this Planning Agreement and participation in the development of the NCCP/HCP is voluntary. The Parties recognize that participation in this Planning Agreement or in the NCCP/HCP planning process does not constitute, expressly or implicitly, an authorization by any of the Wildlife Agencies to take any species listed under CESA or the ESA or endorsement by the Wildlife Agencies of the Covered Activities. The parties further recognize that such participation does not reflect or represent an acknowledgment by any Party that the NCCP/HCP is necessary to comply with CESA or the ESA.

### **SIGNATURES:**

Dated: \_\_\_\_\_, 2009

ORANGE COUNTY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2009

CALIFORNIA DEPARTMENT OF FISH  
AND GAME

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2009

U.S. FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_

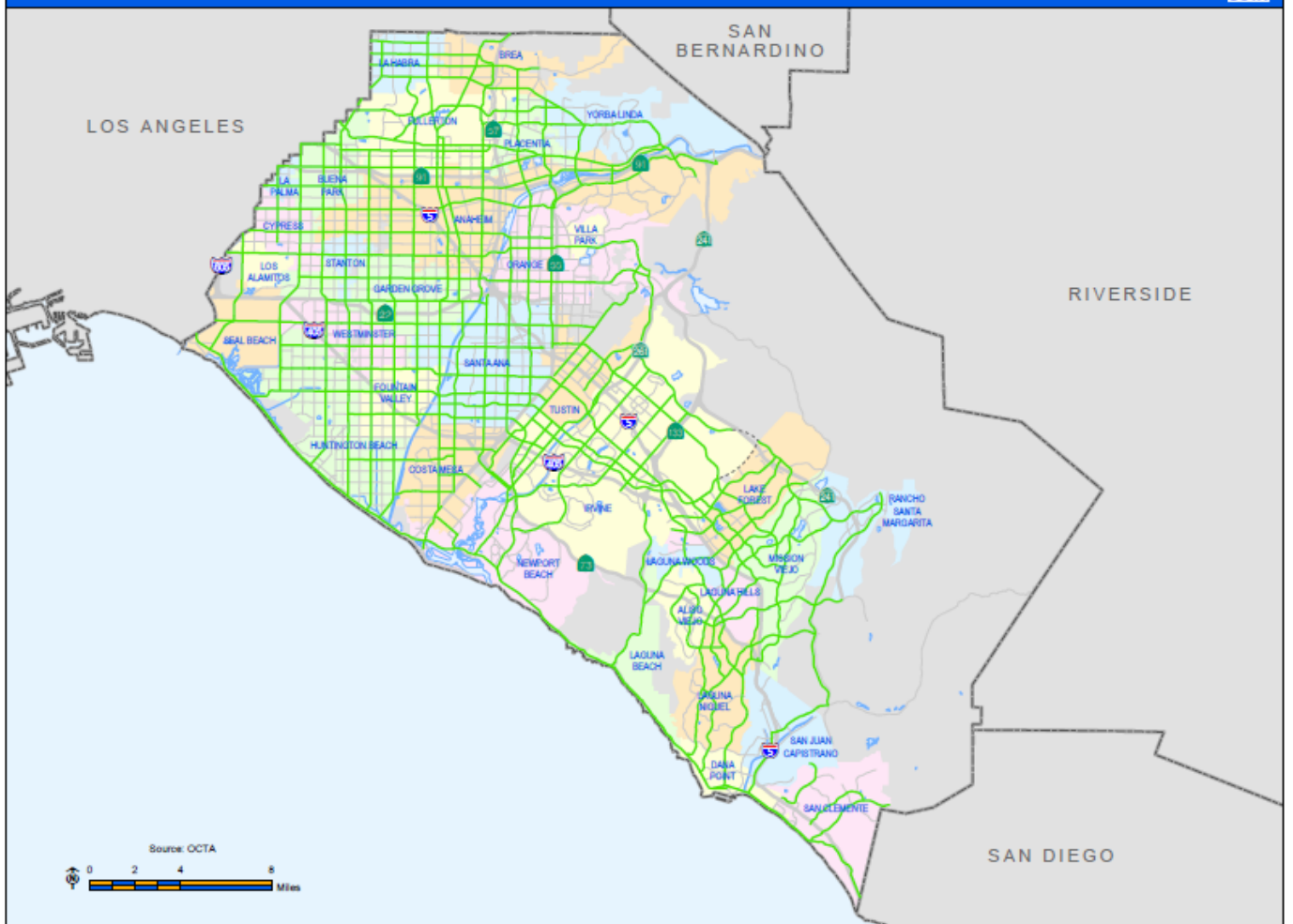
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2009

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_

Title: \_\_\_\_\_



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**ATTACHMENT B**  
**Renewed Measure M Freeway Projects**

*Coding: Federal (F), State(S), Endangered (E), Threatened (T), Candidate (C), California Native Plant Society Inventory (CNPS), Species of Special Concern (SSC), California Fully Protected Species (FP), Fish and Game Code (FGC)*

<b>AMPHIBIANS &amp; REPTILES</b>		
<u>Common Name</u>	<u>Latin Name</u>	<u>Coding</u>
Southern Pacific Pond Turtle	<i>Clemmys marmorata</i>	SSC
San Diego Coast Horned Lizard	<i>Phrynosoma coronatum blainvillii</i>	SSC
Orange Throated Whiptail Lizard	<i>Cnemidophorus hyperythrus beldingi</i>	SSC
Red Diamond Rattlesnake	<i>Crotalus exsul</i>	SCC
<b>BIRDS</b>		
<u>Common Name</u>	<u>Latin Name</u>	<u>Coding</u>
Coastal Cactus Wren	<i>Campylorhynchus brunneicapillus cousei</i>	SSC
Coastal California Gnatcatcher	<i>Polioptila californica californica</i>	FT/SSC
Coastal Rufous-Crowned Sparrow	<i>Aimophila ruficeps</i>	SSC
Southwestern Willow Flycatcher	<i>Empidonax traillii extimus</i>	FE/SE
Least Bell's Vireo	<i>Vireo bellii pusillus</i>	FE/SE
<b>FISH</b>		
<u>Common Name</u>	<u>Latin Name</u>	<u>Coding</u>
Arroyo Chub	<i>Gila orcuttii</i>	SSC
Santa Ana Sucker	<i>Catostomus santaanae</i>	FT
<b>MAMMALS</b>		
<u>Common Name</u>	<u>Latin Name</u>	<u>Coding</u>
Bobcat	<i>Lynx rufus</i>	FGC
Mountain Lion	<i>Felis concolor</i>	FGC
Pallid bat	<i>Antrozous pallidus</i>	SSC
Small-footed myotis	<i>Myotis cilioabrum</i>	SSC
Long-eared myotis	<i>Myotis evotis</i>	SSC
Yuma myotis	<i>Myotis ymanensis</i>	SSC
<b>PLANTS</b>		
<u>Common Name</u>	<u>Latin Name</u>	<u>Coding</u>
Braunton's Milk-Vetch	<i>Astragalus brauntonii</i>	FE
Coulter's Matilija Poppy	<i>Romneya coulteri</i>	CNPS 4.2
Intermediate Mariposa Lily	<i>Calochortus weedii var. intermedius</i>	CNPS 1B.2
Many Stemmed Dudleya	<i>Dudleya multicaulis</i>	CNPS 1B
Southern Tarplant	<i>Centromadia parryi ssp. Australis</i>	CNPS 1B.1